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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/677,989

10/02/2003

Peter Spiess

1-16565

9067

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7590

01/14/2009

FRASER CLEMENS MARTIN & MILLER LLC  
28366 KENSINGTON LANE  
PERRYSBURG, OH 43551

EXAMINER

PICO, ERIC E

ART UNIT

PAPER NUMBER

3654

NOTIFICATION DATE

DELIVERY MODE

01/14/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10677989	10/2/2003	SPIESS, PETER	1-16565

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**EXAMINER**

ERIC PICO

ART UNIT	PAPER
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3654

20081223

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

In response to applicant's request for a corrected Notice of Allowability confirming that all certified copies of priority have been received, 37 CFR 1.10(e) sets forth procedures for filing a petition to the Director to accord a filing date as of the date of deposit with the USPS, where correspondence deposited as "Express Mail" is never received by the Office. Such a petition should:

- (A) be filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
- (B) include a showing that the number of the "Express Mail" mailing label was placed on each piece of correspondence prior to the original mailing;
- (C) include a true copy of the originally deposited correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in" or other official notation entered by the USPS; and
- (D) include a statement, signed by the person who deposited the documents as "Express Mail" with the USPS, setting forth the date and time of deposit, and declaring that the copies of the correspondence, "Express Mail" mailing label, and returned postcard receipt accompanying the petition are true copies of the correspondence, mailing label and returned postcard receipt originally mailed or received.

37 CFR 1.10(e) provides for the filing of a petition to accord correspondence a filing date as of the date of deposit with the USPS as "Express Mail" only where the correspondence was mailed with sufficient postage and addressed as set out in 37 CFR 1.1(a). There is no corresponding provision that correspondence be properly addressed and mailed with sufficient postage in 37 CFR 1.10(a), (c) and (d), because these sections apply only to correspondence that is actually received by the Office. Correspondence mailed by "Express Mail" that is actually received by the Office will not be denied a filing date as of the date of deposit as "Express Mail" simply because the correspondence was not mailed with sufficient postage or not addressed as set out in 37 CFR 1.1(a). 37 CFR 1.10(e)(3) provides that if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label, the petition should include a showing under 37 CFR 1.10(d)(3), as discussed above, that the correspondence was deposited as "Express Mail" before the last scheduled pickup on the requested filing date in order to obtain a filing date as of that date. 37 CFR 1.10(e) applies only in those situations in which the correspondence at issue was lost in toto (i.e., the entire correspondence was not delivered to the Office). Where there is a dispute as to the contents of correspondence submitted to the Office (e.g., an applicant asserts that three sheets of drawings were submitted under 37 CFR 1.10 with an application, but the Office records indicate receipt of only two sheets of drawings with the application), an applicant may not rely upon the provisions of 37 CFR 1.10(e) to establish what document(s) and/or fee(s) were filed in the Office with such correspondence. Rather, where the records of the Office (e.g., the file of the application) contain any document(s) or fee(s) corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in absence of convincing evidence (e.g., a postcard receipt under MPEP § 503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s) or fee(s) that is not among the official records of the Office.

/Peter M. Cuomo/  
Supervisory Patent Examiner, Art Unit 3654

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